

Lynk, Brian (ENRD)

From: Ryan Walters <Ryan.Walters@oag.texas.gov>
Sent: Tuesday, December 5, 2023 3:47 PM
To: Lynk, Brian (ENRD); Munera Al-Fuhaid; David Bryant; Ethan Szumanski; Sharon Murray; Amber Ahmed; Logan Harrell; Ari Cuenin; Patrick Sweeten; Tamera Martinez; Jacob Przada
Cc: Kimball, Kimere (ENRD); Dingivan, James (USATXW); Wade, Landon (USATXW); Knudsen, Andrew (ENRD); Ryan Walters
Subject: [EXTERNAL] RE: United States v. Abbott (W.D. Tex. No. 23-cv-853) -- Fifth Circuit has dissolved admin stay
Attachments: US v. Abbott - PFREB.pdf
Categories: #1107999 : 90-5-1-1-22454 : ENV_DEFENSE

Brian:

Thank you for your email yesterday morning regarding the preliminary injunction that is the subject of this appeal. We have since filed a petition for rehearing en banc (attached) that states our position on the issue your email raised:

Because the panel did not issue its mandate forthwith but rather will do so on January 23, 2024, Appellants do not interpret the panel's opinion to require any immediate action pending this Court's decision on the current petition. To the extent the Court disagrees, Appellants request immediate reinstatement of the administrative stay of the district court's preliminary injunction to prevent harm to the State pending this Court's further review.

Pet. 15 (citing *BST Holdings v. OSHA*, No. 21-69845, 2021 WL 5166656, at *1 (5th Cir. Nov. 6, 2021) (per curiam)).

As you know, the Fifth Circuit has already called for a response to our petition by December 15, 2023, in which Appellee will be free to dispute our interpretation or oppose our request. In light of the position stated in our petition, however, we believe that the logistical demands in your email are premature at this time.

Ryan

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From: Lynk, Brian (ENRD) <Brian.Lynk@usdoj.gov>
Sent: Monday, December 4, 2023 11:46 AM
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Subject: RE: United States v. Abbott (W.D. Tex. No. 23-cv-853) -- Fifth Circuit has dissolved admin stay

Good afternoon counsel,

We are in receipt of the 5th Circuit's opinion Friday (attached) affirming Judge Ezra's September 6, 2023 preliminary injunction order (also attached), and dissolving the administrative stay that the 5th Circuit previously had issued, such that the preliminary injunction is in effect. 5th Circuit slip. op. at 2, 28. Paragraph 2 of the preliminary injunction states as follows:

Defendants shall, by September 15, 2023, reposition, at Defendants' expense, and in coordination with the United States Army Corps of Engineers, all buoys, anchors, and other related materials composing the floating barrier placed by Texas in the Rio Grande in the vicinity of Eagle Pass, Texas to the bank of the Rio Grande on the Texas side of the river.

To aid in Texas's coordination with USACE on this matter pursuant to Paragraph 2, please inform us as soon as possible regarding the following:

- (1) Texas's anticipated timeframe to comply with Paragraph 2 of the preliminary injunction;
- (2) Texas's plan for compliance, including the location where it intends to move the barrier, how it intends to move the barrier, and the anticipated dates when the work would take place. Please include supporting drawings and maps.

Please note that USDOJ should be copied on any direct communication to USACE relating to this matter.

Best regards,

Brian H. Lynk
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From: Ryan Walters <Ryan.Walters@oag.texas.gov>
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